



Montana Fish, Wildlife & Parks

DECISION NOTICE

Proposed TCF Addition to Garry Mountain Wildlife Management Area

Montana Fish, Wildlife & Parks, Region 2

3201 Spurgin Road, Missoula MT 59804

Phone 406-542-5500

September 15, 2014

DESCRIPTION OF PROPOSED ACTION

The 9,475-acre Garry Mountain Wildlife Management Area (GMWMA), located 2 miles west of Anaconda in southwest Montana, was purchased in two phases in 2000 and 2001 by Montana Fish Wildlife & Parks (FWP). The predominate funding party was the Montana Department of Justice's Natural Resource Damage Program (NRDP), which administers funds derived from a series of settlements between the State of Montana and Atlantic Richfield Company (ARCO) for damages to the Upper Clark Fork River Basin from mining and smelting activities.

FWP proposes to add 640 acres (portions of T4N R11W Sect 6 and T5N R11W Sect 32) via fee-title acquisition to the GMWMA, in order to protect critical elk winter range and calving habitat, conserve aspen stands and grasslands that support a diversity of wildlife species, improve public access to the existing WMA, and provide for public recreational use including big game hunting. The land (hereafter, Garry addition or the addition) is owned by The Conservation Fund (TCF), which purchased it from American Bank of Bozeman with the intent to convey it to FWP.

The Garry addition is notable for its extensive aspen stand which, in combination with grasslands and riparian areas onsite, provides high-quality habitat for multiple species including 24 Montana Species of Concern (SOC) and Potential SOC. It has habitats prioritized for conservation in *Montana's Comprehensive Fish and Wildlife Conservation Strategy* (FWP 2005) and the *Upper Clark Fork River Basin Terrestrial Wildlife Resource Prioritization* (DuBois et al. 2011). The addition is in a landscape targeted for expenditure of funds for terrestrial resource replacement, and purchase of the property was specifically identified as an opportunity in the *Final Upper Clark Fork River Basin Aquatic and Terrestrial Resources Restoration Plans* (NRDP 2012).

The appraised value of the Garry addition and sale price from TCF to FWP would be \$1.38 million. As proposed, NRDP would pay \$1.28 million, FWP would pay \$50,000 from the Habitat Montana Fund, and the Montana Fish & Wildlife Conservation Trust would pay \$50,000 to convey the property to FWP. In addition NRDP would provide up to \$80,000 for start-up operations and maintenance costs incurred during the first 5-years of FWP ownership.

The Garry Mountain WMA Addition Management Plan, which outlines management actions on the WMA, provides a budget for use of start-up funds, and stresses that FWP will act as a good neighbor. While the addition would be managed foremost for the conservation of wildlife habitat, it would provide for outdoor recreation including hunting, hiking, horseback riding, fishing, trapping, and wildlife watching in immediate proximity to Anaconda. Purchase would provide more favorable access to the

WMA and complement the existing GMWMA by providing additional winter range and dense stands of aspen. The acquisition would also protect the existing resource values by precluding development (e.g., subdivision) of the property or other management practices that might occur under private ownership and could be incompatible with fish and wildlife objectives. Simultaneously the addition would conserve critical wildlife habitat and provide for public access with funds dedicated specifically to restoration of the Upper Clark Fork River Basin and replacement of lost resources.

OBJECTIVES OF THE PROPOSED ACTION

- To protect and enhance critical elk calving grounds and winter range
- To protect and enhance other seasonal habitats for a diverse complement of fish and wildlife
- To establish and maintain public access and outdoor recreation opportunities
- To facilitate and complement management of the existing Garrity Mountain WMA
- To replace lost and injured resources that were the subject of the Montana vs. ARCO settlement

ALTERNATIVES CONSIDERED TO THE PROPOSED ACTION

No Action Alternative. Under this alternative FWP would not purchase the 640 acres proposed as an addition to the GMWMA, and the property would remain under ownership of TCF, which would ultimately be obliged to sell the property, most likely to a private buyer. Depending on the values and management approach of the initial buyer or subsequent owners, the land could be subdivided and developed, or otherwise managed in a manner that conflicts with FWP's objectives for the addition and the adjoining GMWMA. Public access for outdoor recreation is unlikely if it were to become privately owned.

Conservation Easement Alternative. This alternative was considered but eliminated from analysis, because the owner is not interested in donation or sale of a conservation easement.

PUBLIC REVIEW PROCESS

FWP is required by the Montana Environmental Policy Act (MEPA) to assess potential impacts of its proposed actions to the human and physical environments, evaluate those impacts through an interdisciplinary approach, including public input, and make a decision based on this information. FWP released a draft environmental assessment (EA; "Proposed Addition to the Garrity Mountain Wildlife Management Area") for public review of this proposal on August 1, 2014 and accepted public comment until 5:00 P.M. on September 2, 2014.

Legal notices of the proposed addition and its Draft EA availability were published in the following newspapers (dates): *Anaconda Record* (August 1, 8), *Independent Record* (Helena; August 1, 8), *Missoulian* (August 1, 8), and *Montana Standard* (Butte; August 1, 8). FWP issued a statewide news release regarding this proposal on August 7, 2013.

FWP mailed 23 copies of the EA, and emailed approximately 33 notifications of the EA's availability, to adjacent landowners and interested individuals, groups and (non-FWP) agencies. The EA was available

for public review and comment on FWP's web site (<http://fwp.mt.gov/>, "Public Notices") beginning August 1 through September 2, 2014.

A public hearing to explain the project, answer questions and take public comment was held in Anaconda on August 14 (7:00 p.m. to 9 p.m.) at the Metcalf Memorial Senior Citizen Center.

SUMMARY OF PUBLIC COMMENT

FWP received 11 written or emailed comments (Appendix A), representing 10 people (5 from Anaconda, 5 unknown), and one public agency (Pintler Ranger District [RD], Philipsburg). Nine (including the Pintler RD) of the 11 commenters specifically supported the acquisition, and one did not state support or opposition. Also, one commenter supported the acquisition contingent on FWP allowing wolf trapping on the parcel; however, since the overall WMA (including the proposed addition) would be closed during the winter wolf trapping season due to big game winter habitat, FWP would count this commenter as being against the acquisition.

Ten (all from Anaconda; Appendix B) of the approximately 26 people who attended the public hearing offered testimony: 9 gave verbal testimony and one person submitted written testimony. Eight (including one person officially representing the Anaconda Sportsmen's Club) supported the acquisition, and 2 (including the written testimony) did not state support or opposition. (Almost all present concurred that they were in support, when asked by the president of the Anaconda Sportsmen's Club.)

Combining and summarizing all 20¹ comments received:

- 16 commenters (14 people, 1 organization, and 1 public agency) expressed support for the acquisition;
- 3 did not specifically state support or opposition to the acquisition; and
- one commenter is counted as opposing the acquisition, because his specified condition would not be met.

No concerns were raised that would bring the environmental analysis into question, and the draft EA is therefore accepted as final.

RESPONSE TO PUBLIC COMMENT

Written and verbal public comments that raised issues requiring response are noted below; written comments are listed with FWP's responses, and representative verbal testimony is grouped by topic and addressed as necessary. (All comments may be found in the Appendices to this document.)

Written Comments Requiring Response

Comment. Although the Pintler Ranger District does not directly adjoin this property, it is adjacent to the GMWMA on the west side. Noxious weed management and spread is a concern we share. We support the non-motorized seasonal use and noxious weed management proposed for this property once FWP has ownership.

¹ One person submitted written comment and also testified at the public hearing, and is counted only once.

FWP Response. FWP is committed to working with our neighbors--public agencies as well as private land-owners--we appreciate USFS support of our proposed management plan and will continue to work collaboratively to manage public lands west of Anaconda.

Comments. I support the proposed acquisition provided FWP authorizes wolf trapping on the Garrity Mountain WMA as part of the recreational use.

FWP Response. FWP manages wolves through harvest and is interested in facilitating wolf harvest where it does not conflict with other objectives or legal constraints. In the case of the Garrity addition, the area would be closed to all public use from December 2 through May 14 to protect wintering elk, as is the case for the existing GMWMA. Harvest of wolves via hunting would be allowed when the WMA is open for public use (during established wolf hunting seasons).

Comment. I am supportive of the purchase. I am just concerned that the public often pays more than these properties would bring on the open market. Then we own it, but there is no funding to manage it. Such as treating weeds and or other potential purchases can't happen because we blow the funding on overpriced purchases.

FWP Response. The appraised fair market value of the property (\$1.38 million) would be paid for the land and FWP would also receive \$80,000 in start-up funds dedicated to treat weeds, create a parking area, and complete other necessary operations and maintenance during the first 5-years of FWP ownership.

Comments. Totally in favor of this purchase--what a great piece of property for habitat. Only disappointment is yet another locked gate with walk-in capabilities only. As we age, we need access (limited). I know an open roadway would be abused by 4-wheelers and irresponsible persons, but we need to find a solution to all these gated, "Open to Everyone" state lands.

I cannot understand why there will be no motorized access to "Garrity Mountain" WMA. Wasting all of that money on locks and gates isn't right.

FWP Response. We appreciate your concerns about access and would like to explain that the most logical and passable roads to access the property go through neighboring lands that are owned by private parties. As such, FWP's options to improve access at this juncture are limited. (Also see response relative to access under the verbal testimony.)

Comment. This property should remain roadless to protect the grasses that are so crucial to many kinds of wildlife--deer (white-tailed and mule) and even antelope. Last summer there were 4 antelope on it. Please consider adding this parcel to the Wildlife Management Area.

FWP Response. While the property is not technically roadless--it has several jeep trails--under the proposed management plan all access will be non-motorized.

Comment. My only comment is that I wish the "plan" would allow tree cutting--especially of the dead and beetle-kill variety. Thinning and cleaning the forest floor will "reroute" the wildlife only for a short time. They'll be back.

FWP Response. There could be opportunity to cut dead conifers within aspen stands if there is a clear resource benefit. As specified in the Management Plan, "If aspen stands are found to not

be regenerating FWP would consider thinning aspen stands and encroaching conifers to stimulate new growth.”

Public Meeting Comments Requiring Response

Access

- From an access standpoint off Stumptown Road it's appropriate. But there's another access road that is County and through Dennis Washington's land . . . Encourage FWP to build a little parking lot to help.
- I think if we, the state of Montana is going to buy this land, it needs to be for everybody, not just for the people who can walk. It should still be accessible to 4-wheelers, and I don't want to see any gates.
- This is going to be one access and anyone--a child, a kid, a family--can go up there. They're going to appreciate it. [In favor of the proposed walk-in only access.]
- I'm against motorized travel in there; if you put motorized on this property, the elk will be gone.
- There should be access further on the road to get up to the property for us old people . . . We need some access to get into that back country; just one way--that's all we're asking for.
- I'm not opposed to modernization . . . we've had a lot of that. Every, every, every time we've got less places to walk and more gates to open.
- There are ATVs and motorcycles going up/down the [county] road all day long. Being so close to Anaconda, if you open it up to motorized, then that's going to be continuous use and a problem in the future.
- A lot of these areas are closed, because they used to ALL be open--we used to be able to go anywhere we wanted--a lot of you guys remember that. When people can go anywhere they want, they end up not taking care of the resource. Trails get pushed into areas where they don't belong. If this property is being purchased for elk habitat, then elk need to be the number one priority out there. Elk and vehicles just don't mix very well. AND they don't mix with adjacent landowners either. I'd like to make sure that if you get this property, it be non-motorized.

FWP Response. A clarification regarding the existing access to the Garrity addition is necessary. The South Cable Road runs along the northern boundary and leads to a gate where FWP proposes to build a parking area. There is not a road currently suitable for vehicle traffic at that point and FWP is not planning on building one. The other entry points are from unmaintained roads that pass through lands belonging to neighboring landowners. Internal roads are not suitable for continuous public use. Construction of a new bridge across Ice House Gulch would be necessary to accommodate public travel.

While we appreciate the public's interest in driving closer to Mt. Haggin and Hearst Lake, the road to those destinations is on private property owned by Mountain Lion LLC and managed by the city of Anaconda as part of its watershed. The city currently allows walk-in access on the "Hearst Lake Road," and the public may access the Garrity addition from that road. If Anaconda were to allow public motorized access along the Hearst Lake Road, FWP would in consultation with them explore options to provide additional motorized access to the Garrity addition (and doing so would require construction of an additional parking area and gates).

Managing access to GMWMA in order to satisfy all parties is a challenge. FWP must balance the timing and type of public access allowed on the addition, with resource protection. Given that

the Garrity addition is in immediate proximity to Anaconda, the provision of access only by nonmotorized means is least likely to jeopardize the high-resource values for which we propose to purchase it. As noted by a couple respondents we are concerned that access for all-terrain vehicles might displace elk and lead to the pioneering of new motorized trails. In addition there is less risk that weeds will be introduced or spread in GMWMA if access is only by nonmotorized means.

Development

- Issues we have in Anaconda are huge . . . we live in the largest Super Fund site in the state of Montana. There's no land we can actually purchase east of that. We live in the canyon and that's it; the land that we have left is right around here. We have no place to build, no place to go. Those are things we need to take into consideration before we make a decision on this--before we start to purchase more land.
- This is a prime building area near Anaconda; don't want to see this area developed.

FWP Response. FWP acquisition of the Garrity addition would preclude future division and development of the parcel. This would be in keeping with FWP's management objectives for the proposed addition, including protecting/enhancing seasonal elk calving and winter range, as well as public access and recreation.

Elk Winter Range

- I'm an adjacent property owner from this parcel. Have observed elk on this parcel last 40 years (saw 361 back in about 1992), also deer, saw antelope last year . . . This property is as low as the elk can come; they have no other place to go, but everything else is getting developed. This is the last place near Anaconda that these elk have to go.
- Property has so many good points to it, especially in wintertime. I see the elk in there; it is one of the few places they have, when the snow blows off the ridges, you can see them congregate there. It's really vital to their well-being.

FWP Response: We concur. Winter range in the eastern portion of Hunting District 214 is limited to Garrity Mountain WMA, the Garrity addition, the Mountain Lion LLC property, and a disjunct portion along Mill Creek. Elk have used the property for years and were found there last winter when during an aerial survey 190 elk (69% of all observed elk from Georgetown Lake to Mill Cree) were seen wintering on the property on 24 March 2014. In exceptionally harsh months like February and March of 2014, the property supports the majority of elk in the area.

Management

- Long-term you're probably going to have to look at some kind of management for that aspen.... So I'd look at the management of the aspen long-term.
- Fire suppression--I believe in fire *management*; really don't think a strict fire suppression policy is what's needed on this property. And if there's anyone who should be worried about fire on Garrity, it's me as adjacent landowner. But we need some sort of option for fire generation in the future, especially spring time burns. Would support that.
- Relative to timber harvest: there's a lot of dead aspen and beetle-kill lodge pole. It's a liability if we don't do something to reduce the fuel load.
- I see you applied for \$80,000 start-up costs, but if there's any way to keep that going, it's important. There's a 7-year seed viability rate so it's going to have to be a continuous program for awhile.

- Overall your management plan looks like it is pretty solid. I like the fact that you've recognized that I have water rights out there also; so I don't think that's going to be a conflict at all.

FWP Response: As per the management plan, FWP may thin encroaching conifers, including beetle-kill, if the aspen stand is not sufficiently regenerating. We recognize that aspen benefits from disturbance, whether from fire or other physical disturbance, which stimulates the root system. Because of the proximity to town and extent of the aspen stand across multiple ownerships, FWP expects that any prescribed burns would be cooperatively designed and implemented with, e.g., Anaconda-Deer Lodge County and DNRC. At this time we anticipate that mechanical disturbance would be a more appropriate tool.

Noxious weed management would occur as long as the property is in FWP ownership. FWP has (in compliance with 7-22-2151, MCA) developed a noxious weed management plan, approved by the County weed board. An integrated pest-management approach would be used to detect and control invasive weeds using biological and chemical agents. Initial funding for weed management would come from NRDP start-up funds, thereafter FWP would pay for noxious weed management with funds from Habitat Montana or with additional allocations from NRDP.

Relative to the water rights of neighbors, FWP is bound legally to honor them. FWP strives to be a good neighbor and is committed to work with you to address management issues of mutual interest like water rights and weed management. Your support of our management plan is welcome.

DECISION

Based upon the Draft Environmental Assessment and the applicable laws, regulations, and policies, I have determined that the proposed action will not have negative effects on the human and physical environments associated with this project. Therefore, I conclude that the EA is the appropriate level of analysis and the preparation of an Environmental Impact Statement is unnecessary.

This decision benefited from public review of the proposal and informed comment. The majority of comments received were in support of FWP acquisition of the subject property and its management as part of the Garrity Mountain WMA, as proposed.

In consideration of these facts and with this Decision Notice, I adopt the Draft EA as final. I recommend to the Fish and Wildlife Commission that it approve the proposed purchase of this 640-acre parcel from The Conservation Fund and its addition to the Garrity Mountain WMA.



Randy Arnold
Region 2 Supervisor
Montana Fish, Wildlife & Parks

9-15-2014

Date

REFERENCES

- DuBois, K., R. Vinkey, S. Story, C. Fox, and G. Mullen. 2011. Upper Clark Fork River Basin Terrestrial Wildlife Resource Prioritization, Final. Montana Fish, Wildlife & Parks and Montana Department of Justice Natural Resource Damage Program. https://doj.mt.gov/wp-content/uploads/2011/06/Dec_2011_Final_Terrestrial_Prioritization.pdf Accessed 15 September 2014.
- Montana Fish, Wildlife & Parks (FWP). 2005. Montana's Comprehensive Fish and Wildlife Conservation Strategy. Montana Fish, Wildlife & Parks, 1420 East Sixth Avenue, Helena, MT. <http://fwp.mt.gov/fishAndWildlife/conservationInAction/fullplan.html> Accessed 15 September 2014.
- Natural Resource Damage Program (NRDP). 2012. Final Upper Clark Fork River Basin Aquatic and Terrestrial Resources Restoration Plans. State of Montana, Natural Resource Damage Program, 1301 E Lockey, Helena, MT. <https://doj.mt.gov/wp-content/uploads/Final-AT-Restoration-Plan-Combined.pdf> Accessed 15 September 2014.